

SENATE BILL 911

C5, P1, L6

0lr1103
CF HB 1290

By: ~~Senator Astle~~ **Senators Astle, Della, Exum, Garagiola, Glassman,
Klausmeier, and Middleton**

Introduced and read first time: February 17, 2010

Assigned to: Rules

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 31, 2010

CHAPTER _____

1 AN ACT concerning

2 **Underground Facilities – Damage Prevention**

3 FOR the purpose of repealing certain provisions of Maryland’s underground facilities
4 damage prevention laws; expanding the scope of the underground facilities
5 damage prevention laws to apply to an owner or lessee of a private residence
6 who performs an excavation or demolition on the land of the private residence;
7 establishing the Maryland Underground Facilities Damage Prevention
8 Authority; declaring the intent of the General Assembly that the Authority not
9 be funded through State budget appropriations; providing for the appointment
10 and terms of the members of the Authority; providing for the selection of a chair
11 of the Authority in a certain manner; establishing quorum requirements for the
12 Authority, and requiring the Authority to meet at a certain frequency; providing
13 that a member of the Authority may not receive compensation and is not
14 entitled to reimbursement for expenses; authorizing the Authority to perform
15 certain acts; requiring the Authority to adopt a code of conduct for its members;
16 authorizing the Authority to obtain funding for its operational expenses from
17 certain sources; prohibiting the Authority from imposing a certain charge or
18 assessment against a person for certain purposes under certain circumstances;
19 authorizing the Authority to enforce the underground facilities damage
20 prevention laws by hearing complaints, assessing certain penalties, and
21 reaching a settlement instead of certain penalties; authorizing the Authority to
22 establish certain fees and use the services of a third party to collect certain civil
23 penalties; requiring that a certain hearing before the Authority be conducted in

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a certain manner; authorizing a person aggrieved by a decision of the Authority
2 to request judicial review of the decision in a certain manner; providing that a
3 record of a hearing conducted by the Authority is not admissible in certain
4 administrative or civil proceedings; requiring the Authority to submit a certain
5 report to the Governor and General Assembly each year; establishing the
6 Maryland Underground Facilities Damage Prevention Education and Outreach
7 Fund as a special, nonlapsing fund to be used for certain purposes; providing for
8 the use and administration of the Fund; requiring a person performing a certain
9 emergency excavation or demolition immediately to notify a certain one-call
10 system to inform certain ~~owners~~ owner-members of underground facilities of
11 the excavation or demolition; providing that a person that abuses the emergency
12 demolition procedures in this Act is subject to certain penalties; requiring an
13 owner of underground facilities to be a member of a one-call system by
14 registering with the one-call system; requiring certain owners to become
15 members of a one-call system and to submit to the one-call system and keep
16 current certain information; requiring a person that intends to perform an
17 excavation or demolition in the State to initiate a certain ticket request with a
18 certain one-call system; requiring the one-call system to promptly transmit a
19 copy of a certain ticket to certain owner-members under certain circumstances;
20 providing that a ticket is valid for a certain period; requiring a person that
21 intends to perform an excavation or demolition to repeat a certain notice to the
22 one-call system under certain circumstances; requiring an ~~owner~~
23 owner-member of underground facilities to mark the underground facilities in a
24 certain manner under certain circumstances; requiring an ~~owner~~
25 owner-member to report certain information to an underground facilities
26 information exchange system within a certain period after a certain event;
27 requiring an ~~owner~~ owner-member to take certain actions if the ~~owner~~
28 owner-member, for certain reasons, is unable to mark the underground
29 facilities within a certain period; authorizing an ~~owner~~ owner-member and
30 person conducting an excavation or demolition to reach a working agreement
31 regarding the schedule for marking an underground facility; providing that a
32 person may begin excavation or demolition only after receiving a certain notice;
33 providing that a person performing an excavation or demolition is responsible
34 for the maintenance of underground facility markings and shall perform the
35 excavation or demolition in a certain manner; requiring a certain person to
36 provide certain notice of certain damage to, or disturbance of, an underground
37 facility; requiring a person to take certain measures if the person knows or has
38 reason to know of an unmarked underground facility in the area of an
39 excavation or demolition; authorizing the Department of Transportation, the
40 Department's administrations, and the Maryland Transportation Authority to
41 collect certain fees; ~~repealing the authority of a political subdivision or~~
42 ~~municipal corporation to charge a marking or re-marking fee for the~~
43 ~~reimbursement of expenses incurred by the political subdivision or municipal~~
44 ~~corporation in complying with the State's underground facilities damage~~
45 ~~prevention laws;~~ authorizing a designer to initiate a ticket request with a
46 certain one-call system under certain circumstances; requiring an ~~owner~~
47 owner-member to respond to a ticket requested by a designer in a certain

1 manner within a certain period after receiving a certain notice; providing that
 2 an ~~owner~~ owner-member or agent of an ~~owner~~ owner-member is not liable for
 3 inaccurate information provided to a designer in response to a ticket request;
 4 increasing certain civil penalties under the underground facilities damage
 5 prevention laws; authorizing the Authority to impose certain measures instead
 6 of or in addition to certain civil penalties; providing that certain civil penalties
 7 may be assessed only by the Authority; providing that a court may assess
 8 certain civil penalties and award certain attorney's fees under certain
 9 circumstances; providing that the Authority may not assess a certain penalty if
 10 a certain action has been brought in a certain venue; altering a provision
 11 regarding the disposition of civil penalties and requiring that civil penalties
 12 recovered under the underground facilities damage prevention laws be paid into
 13 the Fund; providing that employees and officials of the Authority are State
 14 personnel under the Maryland Tort Claims Act; ~~altering the definition of~~
 15 ~~underground facility to include stormwater drains after a certain date;~~
 16 ~~requiring an owner of stormwater drains to make a good faith effort to identify~~
 17 ~~the location of the stormwater drains by a certain date; holding an owner~~
 18 ~~harmless under this Act with respect to any stormwater drain the owner could~~
 19 ~~not locate and identify after a good faith effort; providing for a delayed effective~~
 20 ~~date for a certain provision of this Act;~~ defining certain terms and altering
 21 certain definitions; making stylistic changes; and generally relating to
 22 excavation or demolition near underground facilities and underground facilities
 23 damage prevention.

24 BY repealing

25 Article – Public Utility Companies
 26 Section 12–107 through 12–110; and 12–201 through 12–203 and the subtitle
 27 “Subtitle 2. Excavation Near Underground Lines and Structures in
 28 Montgomery County”
 29 Annotated Code of Maryland
 30 (2008 Replacement Volume and 2009 Supplement)

31 BY renumbering

32 Article – Public Utility Companies
 33 Section 12–104, 12–105, 12–106, 12–111, 12–112, and 12–113, respectively
 34 to be Section 12–120, 12–121, 12–122, 12–128, 12–134, and 12–135, respectively
 35 Annotated Code of Maryland
 36 (2008 Replacement Volume and 2009 Supplement)

37 BY repealing and reenacting, with amendments,

38 Article – Public Utility Companies
 39 Section 12–101 and 12–103 to be under the new part “Part I. Definitions;
 40 General Provisions”
 41 Annotated Code of Maryland
 42 (2008 Replacement Volume and 2009 Supplement)

43 BY repealing and reenacting, without amendments,

1 Article – Public Utility Companies
 2 Section 12–102
 3 Annotated Code of Maryland
 4 (2008 Replacement Volume and 2009 Supplement)

5 BY adding to
 6 Article – Public Utility Companies
 7 Section 12–106 through 12–114 to be under the new part “Part II. Maryland
 8 Underground Facilities Damage Prevention Authority”; 12–117 to be
 9 under the new part “Part III. Maryland Underground Facilities Damage
 10 Prevention Education and Outreach Fund”; 12–123 through 12–127; and
 11 12–131 to be under the new part “Part V. Designer Requests”
 12 Annotated Code of Maryland
 13 (2008 Replacement Volume and 2009 Supplement)

14 BY repealing and reenacting, with amendments,
 15 Article – Public Utility Companies
 16 Section 12–120, 12–121, ~~12–122~~, and ~~12–128~~ and 12–122 to be under the new
 17 part “Part IV. Excavation and Demolition”; and 12–135
 18 Annotated Code of Maryland
 19 (2008 Replacement Volume and 2009 Supplement)
 20 (As enacted by Section 2 of this Act)

21 BY repealing and reenacting, without amendments,
 22 Article – Public Utility Companies
 23 Section 12–128 to be under the new part “Part IV. Excavation and Demolition”
 24 Annotated Code of Maryland
 25 (2008 Replacement Volume and 2009 Supplement)
 26 (As enacted by Section 2 of this Act)

27 BY repealing and reenacting, without amendments,
 28 Article – Public Utility Companies
 29 Section 12–134 to be under the new part “Part VI. Enforcement and Penalties”
 30 Annotated Code of Maryland
 31 (2008 Replacement Volume and 2009 Supplement)
 32 (As enacted by Section 2 of this Act)

33 BY repealing and reenacting, with amendments,
 34 Article – State Government
 35 Section 12–101(a)(2)
 36 Annotated Code of Maryland
 37 (2009 Replacement Volume)

38 ~~BY repealing and reenacting, without amendments,~~
 39 ~~Article – Public Utility Companies~~
 40 ~~Section 12–101(a)~~
 41 ~~Annotated Code of Maryland~~

1 ~~(2008 Replacement Volume and 2009 Supplement)~~
 2 ~~(As enacted by Section 3 of this Act)~~

3 ~~BY repealing and reenacting, with amendments,~~
 4 ~~Article – Public Utility Companies~~
 5 ~~Section 12–101(e)~~
 6 ~~Annotated Code of Maryland~~
 7 ~~(2008 Replacement Volume and 2009 Supplement)~~
 8 ~~(As enacted by Section 3 of this Act)~~

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 10 MARYLAND, That Section(s) 12–107 through 12–110; and 12–201 through 12–203
 11 and the subtitle “Subtitle 2. Excavation Near Underground Lines and Structures in
 12 Montgomery County” of Article – Public Utility Companies of the Annotated Code of
 13 Maryland be repealed.

14 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 12–104,
 15 12–105, 12–106, 12–111, 12–112, and 12–113, respectively, of Article – Public Utility
 16 Companies of the Annotated Code of Maryland be renumbered to be Section(s) 12–120,
 17 12–121, 12–122, 12–128, 12–134, and 12–135, respectively.

18 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 19 read as follows:

20 Article – Public Utility Companies

21 PART I. DEFINITIONS; GENERAL PROVISIONS.

22 12–101.

23 (a) In this subtitle the following words have the meanings indicated.

24 [(b) (1) “Contractor” means a person that performs excavations or
 25 demolitions.

26 (2) “Contractor” includes a person that performs excavations or
 27 demolitions under a contract or subcontract.]

28 (B) “AUTHORITY” MEANS THE MARYLAND UNDERGROUND FACILITIES
 29 DAMAGE PREVENTION AUTHORITY.

30 (C) “BUSINESS DAY” MEANS A CALENDAR DAY OTHER THAN A
 31 SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

32 [(c) (D) “Demolition” means an operation in which a structure or mass of
 33 material is wrecked, razed, rended, moved, or removed using any tool, equipment, or
 34 explosive.

1 **(E) “DESIGNER” MEANS A LICENSED ARCHITECT ~~OR ENGINEER,~~**
 2 **PROFESSIONAL ENGINEER, PROFESSIONAL LAND SURVEYOR, OR LICENSED**
 3 **LANDSCAPE ARCHITECT, AS THOSE TERMS ARE DEFINED IN THE BUSINESS**
 4 **OCCUPATIONS AND PROFESSIONS ARTICLE, WHO PREPARES A DRAWING FOR A**
 5 **PROJECT THAT MAY REQUIRE EXCAVATION OR DEMOLITION.**

6 **[(d)] (F)** (1) “Excavation” means an operation in which earth, rock, or
 7 other material in or on the ground is moved, removed, or otherwise displaced by using
 8 any tool, equipment, or explosive.

9 (2) “Excavation” includes grading, trenching, digging, ditching,
 10 **DREDGING**, drilling, **BORING**, augering, tunnelling, scraping, cable or pipe plowing
 11 and driving a mass of material.

12 **(G) “FUND” MEANS THE MARYLAND UNDERGROUND FACILITIES**
 13 **DAMAGE PREVENTION EDUCATION AND OUTREACH FUND.**

14 **(H) “LEGAL HOLIDAY” MEANS:**

15 (1) **THE DAY ON WHICH A LEGAL HOLIDAY, AS DEFINED IN**
 16 **ARTICLE 1, § 27 OF THE CODE, IS OBSERVED; OR**

17 (2) **A FEDERAL LEGAL HOLIDAY.**

18 **[(e)] (I)** “One-call system” means a communications [network] **SYSTEM** in
 19 the State that:

20 (1) allows a person to [telephone a one-number utility protection
 21 system;

22 (2) provides a toll-free number for persons to call and] notify
 23 owner-members of planned excavation or demolition **BY:**

24 **(I) CALLING A TOLL-FREE NUMBER OR ABBREVIATED**
 25 **DIALING CODE; OR**

26 **(II) INITIATING AN INTERACTIVE INTERNET TICKET**
 27 **REQUEST; and**

28 **[(3)] (2)** maintains an [owner-contractor] **UNDERGROUND**
 29 **FACILITIES** information exchange system.

30 **[(f)] (J)** (1) “Owner” means a person that:

- 1 (i) owns or operates an underground facility; and
 2 (ii) has the right to bury an underground facility.

3 (2) "Owner" includes:

- 4 (i) a public utility;
 5 (ii) a telecommunications corporation;
 6 (iii) a cable television corporation;
 7 (iv) a political subdivision;
 8 (v) a municipal corporation;
 9 (vi) a steam heating company; [and]
 10 (vii) an authority; AND

11 **(VIII) A UNIT OF THE STATE.**

12 [(g) "Owner-contractor information exchange system" means an automated
 13 voice response unit maintained as a part of a one-call system.]

14 [(h) (K) "Owner-member" means an owner that participates as a member
 15 in a one-call system.

16 [(i) (L) (1) "Person" has the meaning stated in § 1-101 of this article.

17 (2) "Person" includes:

18 (i) ~~¶~~ a municipal corporation~~¶~~;

19 **(II) THE STATE;**

20 ~~(III)~~ **(III) A POLITICAL SUBDIVISION OF THE STATE;** and

21 [(ii) ~~(III)~~ (IV) [a] ANY governmental unit, department, or
 22 agency.

23 **(M) "TICKET" MEANS A NUMBERED DOCUMENT ISSUED BY A ONE-CALL
 24 SYSTEM TO NOTIFY OWNER-MEMBERS THAT:**

25 **(1) A PERSON INTENDS TO PERFORM AN EXCAVATION OR
 26 DEMOLITION; OR**

1 **(2) A DESIGNER HAS REQUESTED INFORMATION ON THE**
 2 **LOCATION OF UNDERGROUND FACILITIES UNDER § 12-131 OF THIS SUBTITLE.**

3 **(N) “UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM”**
 4 **MEANS AN AUTOMATED VOICE RESPONSE UNIT OR INTERACTIVE INTERNET**
 5 **ACCESS SYSTEM THAT IS MAINTAINED AS PART OF A ONE-CALL SYSTEM.**

6 **[(j)] (O)** (1) “Underground facility” means personal property that is ~~to be~~
 7 buried or submerged for:

8 (i) use in connection with the storage or conveyance of water,
 9 sewage, oil, gas, or other substances; or

10 (ii) transmission or conveyance of electronic, telephonic, or
 11 telegraphic communications or electricity.

12 (2) “Underground facility” includes pipes, sewers, conduits, cables,
 13 valves, lines, wires, manholes, attachments, and those portions of poles below ground.

14 (3) “Underground facility” does not include a stormwater drain.

15 12-102.

16 It is the intent of the General Assembly to protect underground facilities of
 17 owners from destruction, damage, or dislocation to prevent:

18 (1) death or injury to individuals;

19 (2) property damage to private and public property; and

20 (3) the loss of services provided to the general public.

21 12-103.

22 This subtitle does not apply to an excavation or demolition performed or to be
 23 performed by an owner **OR LESSEE** of a private residence when the excavation or
 24 demolition is performed or to be performed:

25 **(1) entirely on the land on which the private residence of the owner**
 26 **OR LESSEE is located; AND**

27 **(2) WITHOUT THE USE OF MACHINERY.**

28 **12-104. RESERVED.**

1 12-105. RESERVED.

2 PART II. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION
3 AUTHORITY.

4 12-106.

5 (A) THERE IS A MARYLAND UNDERGROUND FACILITIES DAMAGE
6 PREVENTION AUTHORITY.

7 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
8 AUTHORITY NOT BE FUNDED BY APPROPRIATIONS FROM THE STATE BUDGET.

9 12-107.

10 (A) THE AUTHORITY CONSISTS OF NINE MEMBERS APPOINTED BY THE
11 GOVERNOR.

12 (B) OF THE NINE MEMBERS:

13 (1) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY
14 THE ASSOCIATED UTILITY CONTRACTORS OF MARYLAND;

15 (2) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY
16 THE PUBLIC WORKS CONTRACTORS ASSOCIATION OF MARYLAND;

17 (3) TWO UNDERGROUND FACILITY OWNERS THAT ARE MEMBERS
18 OF A ONE-CALL SYSTEM FROM A LIST SUBMITTED TO THE GOVERNOR BY THE
19 MARYLAND MEMBERS OF THE MARYLAND/DC SUBSCRIBERS COMMITTEE;

20 (4) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY
21 THE ONE-CALL CENTERS OPERATING IN THE STATE;

22 (5) ONE MEMBER WHO REPRESENTS THE STATE'S UNDERGROUND
23 UTILITY LOCATOR COMMUNITY FROM A LIST SUBMITTED TO THE GOVERNOR BY
24 THE MARYLAND MEMBERS OF THE MARYLAND/DC DAMAGE PREVENTION
25 COMMITTEE;

26 (6) ONE MEMBER WHO HAS EXPERIENCE IN THE FIELD OF
27 UNDERGROUND UTILITIES FROM A LIST SUBMITTED TO THE GOVERNOR BY THE
28 MARYLAND ASSOCIATION OF COUNTIES;

29 (7) ONE MEMBER WHO HAS EXPERIENCE IN THE FIELD OF
30 UNDERGROUND UTILITIES FROM A LIST SUBMITTED TO THE GOVERNOR BY THE
31 MARYLAND MUNICIPAL LEAGUE; AND

1 **(8) ONE MEMBER OF THE GENERAL PUBLIC FROM A LIST**
2 **SUBMITTED TO THE GOVERNOR BY THE OTHER APPOINTED AND QUALIFIED**
3 **MEMBERS OF THE AUTHORITY.**

4 **(C) TO THE EXTENT PRACTICABLE, MEMBERS APPOINTED TO THE**
5 **AUTHORITY SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, AND**
6 **GENDER DIVERSITY OF THE STATE.**

7 ~~**(D)**~~ **(1) THE TERM OF A MEMBER IS 2 YEARS.**

8 **(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY**
9 **THE TERMS PROVIDED FOR MEMBERS OF THE AUTHORITY ON OCTOBER 1,**
10 **2010.**

11 **(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE**
12 **UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**

13 **(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN**
14 **SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS**
15 **APPOINTED AND QUALIFIES.**

16 **(5) A MEMBER MAY NOT BE APPOINTED FOR MORE THAN TWO**
17 **CONSECUTIVE FULL TERMS.**

18 **(6) TO THE EXTENT PRACTICABLE, THE GOVERNOR SHALL FILL**
19 **ANY VACANCY IN THE MEMBERSHIP OF THE AUTHORITY WITHIN 60 DAYS AFTER**
20 **THE VACANCY.**

21 ~~**(D)**~~ **(E) ON THE RECOMMENDATION OF THE AUTHORITY, THE**
22 **GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.**

23 **12-108.**

24 **(A) FROM AMONG ITS MEMBERS, EACH YEAR THE AUTHORITY SHALL**
25 **SELECT A CHAIR.**

26 **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE MANNER OF**
27 **SELECTION OF THE CHAIR AND THE CHAIR'S TERM OF OFFICE SHALL BE AS THE**
28 **AUTHORITY DETERMINES.**

29 **(C) A MEMBER MAY NOT SERVE MORE THAN 2 CONSECUTIVE YEARS AS**
30 **CHAIR OF THE AUTHORITY.**

31 **12-109.**

1 **(A) FIVE MEMBERS OF THE AUTHORITY ARE A QUORUM.**

2 **(B) THE AUTHORITY SHALL MEET AT LEAST ONCE EVERY 3 MONTHS AT**
3 **THE TIMES AND PLACES IT DETERMINES.**

4 **(C) A MEMBER OF THE AUTHORITY:**

5 **(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE**
6 **AUTHORITY; AND**

7 **(2) IS NOT ENTITLED TO REIMBURSEMENT FOR EXPENSES.**

8 **12-110.**

9 **(A) THE AUTHORITY MAY:**

10 **(1) ADOPT BYLAWS FOR THE CONDUCT OF ITS BUSINESS;**

11 **(2) ADOPT A SEAL;**

12 **(3) MAINTAIN AN OFFICE AT A PLACE IT DESIGNATES;**

13 **(4) MAINTAIN FACILITIES FOR THE PURPOSE OF HOLDING**
14 **HEARINGS UNDER THIS SUBTITLE;**

15 **(5) EMPLOY A STAFF;**

16 **(6) ACCEPT A GRANT, A LOAN, OR ANY OTHER ASSISTANCE IN ANY**
17 **FORM FROM ANY PUBLIC OR PRIVATE SOURCE, SUBJECT TO THE PROVISIONS OF**
18 **THIS SUBTITLE;**

19 **(7) ENTER INTO CONTRACTS AND EXECUTE THE INSTRUMENTS**
20 **NECESSARY OR CONVENIENT TO CARRY OUT THIS SUBTITLE TO ACCOMPLISH**
21 **ITS PURPOSES; AND**

22 **(8) DO ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT**
23 **THE POWERS EXPRESSLY GRANTED BY THIS SUBTITLE.**

24 **(B) THE AUTHORITY SHALL ADOPT A CODE OF CONDUCT FOR ITS**
25 **MEMBERS.**

26 **12-111.**

1 **(A) THE AUTHORITY MAY OBTAIN FUNDING FOR ITS OPERATIONAL**
 2 **EXPENSES FROM:**

3 **(1) A FEDERAL OR STATE GRANT;**

4 **(2) FILING FEES AND ADMINISTRATIVE FEES FOR COMPLAINTS**
 5 **HEARD BY THE AUTHORITY AS AUTHORIZED UNDER ~~§ 12-112~~ § 12-112(B)(1) OF**
 6 **THIS SUBTITLE; AND**

7 **(3) ANY OTHER SOURCE.**

8 **(B) EXCEPT AS PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION, THE**
 9 **AUTHORITY MAY NOT IMPOSE A CHARGE OR ASSESSMENT AGAINST ANY**
 10 **PERSON, DIRECTLY OR INDIRECTLY, TO OBTAIN FUNDING FOR ITS**
 11 **OPERATIONAL EXPENSES.**

12 **12-112.**

13 **(A) TO ENFORCE THIS SUBTITLE, THE AUTHORITY MAY:**

14 **(1) HEAR COMPLAINTS FOR VIOLATIONS OF THIS SUBTITLE;**

15 **(2) AFTER A HEARING, ASSESS A CIVIL PENALTY UNDER § 12-135**
 16 **OF THIS SUBTITLE; AND**

17 **(3) REACH A SETTLEMENT INSTEAD OF ASSESSING A CIVIL**
 18 **PENALTY.**

19 **(B) (1) THE AUTHORITY MAY:**

20 ~~(1)~~ **(I) ESTABLISH REASONABLE COMPLAINT FILING FEES AND**
 21 **ADMINISTRATIVE FEES FOR COMPLAINTS HEARD BY THE AUTHORITY; AND**

22 ~~(2)~~ **(II) USE THE SERVICES OF A THIRD PARTY TO COLLECT**
 23 **CIVIL PENALTIES.**

24 **(2) IF THE AUTHORITY DETERMINES THAT AN INDIVIDUAL**
 25 **CANNOT AFFORD TO PAY A FEE ESTABLISHED UNDER PARAGRAPH (1)(I) OF THIS**
 26 **SUBSECTION, THE AUTHORITY MAY EXEMPT THE INDIVIDUAL WHOLLY OR**
 27 **PARTLY FROM THE FEE.**

28 **(C) THE AUTHORITY MAY NOT ASSESS A CIVIL PENALTY AGAINST A**
 29 **PERSON UNLESS THE PERSON:**

1 (1) RECEIVES REASONABLE PRIOR NOTICE OF THE COMPLAINT;
2 AND

3 (2) HAS AN OPPORTUNITY TO BE HEARD UNDER § 12-113 OF THIS
4 SUBTITLE.
5 12-113.

6 (A) IN A HEARING BEFORE THE AUTHORITY FOR AN ALLEGED
7 VIOLATION OF THIS SUBTITLE:

8 (1) ALL TESTIMONY SHALL BE GIVEN UNDER OATH; AND

9 (2) THE PROCEEDINGS SHALL BE RECORDED.

10 (B) THE CHAIR OR A MEMBER OF THE AUTHORITY MAY ADMINISTER
11 THE OATH.

12 (C) THE AUTHORITY MAY COMPEL THE ATTENDANCE OF A WITNESS BY
13 SUBPOENA.

14 (D) (1) THE AUTHORITY SHALL ISSUE ITS DECISION IN WRITING,
15 STATING THE REASON FOR ITS DECISION.

16 (2) A COPY OF THE DECISION SHALL BE DELIVERED OR MAILED
17 TO ~~THE PERSON AGAINST WHOM THE COMPLAINT WAS MADE~~ ALL PARTIES TO
18 THE COMPLAINT PROCEEDINGS.

19 (E) (1) A PERSON AGGRIEVED BY A DECISION OF THE AUTHORITY
20 MAY, WITHIN 30 DAYS AFTER RECEIVING THE DECISION, REQUEST JUDICIAL
21 REVIEW OF THE DECISION BY THE CIRCUIT COURT.

22 (2) IN ACCORDANCE WITH THE JUDICIAL REVIEW AND APPEALS
23 PROCESS UNDER THE ADMINISTRATIVE PROCEDURE ACT, THE CIRCUIT COURT
24 SHALL HEAR AND DETERMINE ALL MATTERS CONNECTED WITH THE DECISION
25 OF THE AUTHORITY FOR WHICH JUDICIAL REVIEW IS REQUESTED.

26 (3) (I) ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF
27 THIS PARAGRAPH, THE COSTS OF THE JUDICIAL REVIEW, INCLUDING THE COSTS
28 OF PREPARING A RECORD AND TRANSCRIPT, SHALL BE PAID BY THE PARTY
29 FILING THE REQUEST FOR JUDICIAL REVIEW.

30 (II) IF THE PARTY FILING THE REQUEST FOR JUDICIAL
31 REVIEW PREVAILS, THE CIRCUIT COURT MAY REQUIRE THAT THE COSTS OF THE

1 JUDICIAL REVIEW, INCLUDING THE COSTS OF PREPARING A RECORD AND
2 TRANSCRIPT, BE PAID BY THE AUTHORITY.

3 (4) IF THE REQUEST FOR JUDICIAL REVIEW IS DISMISSED, THE
4 CIRCUIT COURT SHALL AWARD ATTORNEY'S FEES TO THE AUTHORITY UNLESS
5 THE AUTHORITY WAIVES THE AWARD OF ATTORNEY'S FEES.

6 (F) (1) THE RECORD OF A HEARING CONDUCTED UNDER THIS
7 SECTION, INCLUDING ANY RECORD OF TESTIMONY OR EVIDENCE OFFERED AT
8 THE HEARING, IS NOT ADMISSIBLE IN ANY ADMINISTRATIVE OR CIVIL
9 PROCEEDING INVOLVING THE SAME SUBJECT MATTER OR THE SAME PARTIES.

10 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO
11 JUDICIAL REVIEW OF THE AUTHORITY'S DECISION.

12 12-114.

13 BEGINNING JANUARY 1, 2012, THE AUTHORITY SHALL REPORT EACH
14 YEAR TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
15 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE ACTIVITIES OF THE
16 AUTHORITY AND ANY RECOMMENDATIONS OF THE AUTHORITY.

17 12-115. RESERVED.

18 12-116. RESERVED.

19 PART III. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION
20 EDUCATION AND OUTREACH FUND.

21 12-117.

22 (A) THERE IS A MARYLAND UNDERGROUND FACILITIES DAMAGE
23 PREVENTION EDUCATION AND OUTREACH FUND.

24 (B) THE PURPOSE OF THE FUND IS TO COVER THE COSTS OF:

25 (1) PUBLIC EDUCATION AND OUTREACH PROGRAMS; AND

26 (2) THE DEVELOPMENT OF SAFETY PROCEDURES TO PREVENT
27 DAMAGE TO UNDERGROUND FACILITIES.

28 (C) THE AUTHORITY SHALL HOLD AND ADMINISTER THE FUND.

29 (D) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT
30 TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 **(E) THE FUND CONSISTS OF:**

2 **(1) CIVIL PENALTIES PAID INTO THE FUND UNDER § 12-135 OF**
3 **THIS SUBTITLE;**

4 **(2) INVESTMENT EARNINGS OF THE FUND; AND**

5 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
6 **THE BENEFIT OF THE FUND.**

7 **(F) (1) THE FUND MAY BE USED ONLY FOR:**

8 **(I) PUBLIC EDUCATION AND OUTREACH PROGRAMS FOR**
9 **THE PREVENTION OF DAMAGE TO UNDERGROUND FACILITIES; AND**

10 **(II) THE DEVELOPMENT OF SAFETY PROCEDURES FOR**
11 **EXCAVATION AND DEMOLITION PROJECTS CONDUCTED IN THE AREA OF**
12 **UNDERGROUND FACILITIES.**

13 **(2) THE AUTHORITY MAY MAKE GRANTS TO LOCAL**
14 **GOVERNMENTS OR PRIVATE ENTITIES CONSISTENT WITH THE PURPOSES OF**
15 **THE FUND.**

16 **12-118. RESERVED.**

17 **12-119. RESERVED.**

18 **PART IV. EXCAVATION AND DEMOLITION.**

19 **12-120.**

20 (a) Except as provided in subsections (b) and (c) of this section, a person that
21 obtains the information required under this subtitle is not excused from:

22 (1) performing an excavation or demolition in a careful and prudent
23 manner; and

24 (2) liability for damages or injury that results from the excavation or
25 demolition.

26 (b) If an underground facility is damaged by a person that fails to comply
27 with this subtitle, the person is deemed negligent and is liable to the owner for the
28 total cost of repair of the underground facility, unless the owner has failed to become
29 an owner-member in accordance with § [12-109(b)] ~~12-123(A)~~ 12-123 of this
30 subtitle.

1 (c) If an underground facility is damaged by a person who is in compliance
2 with this subtitle and the owner has failed to become an owner-member in accordance
3 with § [12-109(b)] ~~12-123(A)~~ 12-123 of this subtitle:

4 (1) the person is not liable to the owner for the cost of repair of the
5 underground facility; and

6 (2) the owner is liable for any repairs or restoration of property
7 damaged by the excavation or demolition.

8 (d) Subsection (c) of this section may not be construed to interfere with the
9 right of:

10 (1) a third party to recover damages arising out of the excavation or
11 demolition from the person or from the owner; or

12 (2) the person to seek contribution from an owner for damages sought
13 by a third party under paragraph (1) of this subsection.

14 12-121.

15 (a) Subject to § [12-104(b)] **12-120(B)** of this subtitle, if all reasonable
16 precautions have been taken to protect underground facilities, § [12-104(a)]
17 **12-120(A)** of this subtitle and §§ [12-106 through 12-113] **12-122 THROUGH**
18 **12-135** of this subtitle do not apply to an emergency excavation or demolition being
19 performed to prevent danger to life, health, or property.

20 (b) A person performing an emergency excavation or demolition to prevent
21 danger to life, health, or property shall:

22 (1) take all reasonable precautions to protect underground facilities in
23 and near the excavation or demolition area; and

24 (2) [promptly notify each owner of an underground facility in and near
25 the excavation or demolition area] **IMMEDIATELY NOTIFY THE ONE-CALL SYSTEM**
26 **SERVING THE GEOGRAPHIC AREA WHERE THE EMERGENCY EXCAVATION OR**
27 **DEMOLITION IS PERFORMED TO INFORM THE APPROPRIATE OWNER-MEMBERS**
28 **OF THE EXCAVATION OR DEMOLITION AREA.**

29 **(C) A PERSON THAT ABUSES THE EMERGENCY EXCAVATION AND**
30 **DEMOLITION PROCEDURE SET FORTH IN THIS SECTION IS SUBJECT TO**
31 **PENALTIES UNDER § 12-135 OF THIS SUBTITLE.**

32 12-122.

1 (a) Except as provided in subsection (b) of this section, a person that operates
2 a one-call system in the State shall register with and obtain certification to operate
3 from the Commission.

4 (b) A person operating a one-call system on or before July 1, 1990, is
5 automatically registered with and certified by the Commission to continue to operate.

6 (c) (1) The operator of a one-call system shall install and make available
7 an [owner-contractor] **UNDERGROUND FACILITIES** information exchange system in
8 its one-call center in the State.

9 (2) The [owner-contractor] **UNDERGROUND FACILITIES** information
10 exchange system shall be available to any caller at all times.

11 (d) The Commission may grant, amend, or revoke the certification of a
12 person operating a one-call system.

13 **12-123.**

14 (A) **(1) AN OWNER SHALL BE A MEMBER OF A ONE-CALL SYSTEM.**

15 **(2) ~~AN~~ EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
16 **SUBSECTION, AN OWNER BECOMES A MEMBER OF A ONE-CALL SYSTEM BY**
17 **REGISTERING WITH THE ONE-CALL SYSTEM.**

18 **(3) THE DEPARTMENT OF TRANSPORTATION, ITS**
19 **ADMINISTRATIONS, AND THE MARYLAND TRANSPORTATION AUTHORITY SHALL**
20 **BECOME MEMBERS OF THE ONE-CALL SYSTEM THROUGH A SEPARATE**
21 **AGREEMENT AND USING THE INFORMATION COLLECTED UNDER § 12-124(B)(2)**
22 **OF THIS SUBTITLE.**

23 (B) (1) AN OWNER-MEMBER OF A ONE-CALL SYSTEM SHALL SUBMIT
24 TO THE ONE-CALL SYSTEM, IN WRITING, THE TELEPHONE NUMBER OF THE
25 PERSON TO WHICH CALLS CONCERNING PROPOSED EXCAVATIONS OR
26 DEMOLITIONS SHALL BE DIRECTED.

27 (2) AN OWNER-MEMBER SHALL ENSURE THAT ALL CONTACT
28 INFORMATION PROVIDED TO THE ONE-CALL SYSTEM REMAINS CURRENT.

29 **12-124.**

30 (A) A PERSON THAT INTENDS TO PERFORM AN EXCAVATION OR
31 DEMOLITION IN THE STATE SHALL INITIATE A TICKET REQUEST BY NOTIFYING
32 THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA WHERE THE

1 EXCAVATION OR DEMOLITION IS TO BE PERFORMED OF THE PERSON'S INTENT
2 TO PERFORM THE EXCAVATION OR DEMOLITION.

3 (B) NOTICE PROVIDED TO A ONE-CALL SYSTEM UNDER SUBSECTION (A)
4 OF THIS SECTION SHALL INDICATE:

5 (1) THE LOCATION OF THE PROPOSED EXCAVATION OR
6 DEMOLITION; ~~AND~~

7 (2) WHETHER THE PROPOSED EXCAVATION OR DEMOLITION IS
8 WITHIN RIGHTS-OF-WAY OWNED OR CONTROLLED BY THE DEPARTMENT OF
9 TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF
10 TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY AND, IF
11 SO, THE ENTITY AND THE PERMIT NUMBER OR AUTHORIZATION NUMBER
12 OBTAINED FROM THAT ENTITY; AND

13 ~~(2)~~ (3) THE TYPE OF WORK TO BE PERFORMED IN CONNECTION
14 WITH THE PROPOSED EXCAVATION OR DEMOLITION.

15 (C) (1) ~~ON~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
16 SUBSECTION, ON RECEIVING NOTICE, THE ONE-CALL SYSTEM SHALL PROMPTLY
17 TRANSMIT A COPY OF THE TICKET TO ALL OWNER-MEMBERS IN THE
18 GEOGRAPHIC AREA INDICATED FOR THAT TICKET.

19 (2) BASED ON INFORMATION COLLECTED UNDER § 12-124(B)(2)
20 OF THIS SUBTITLE, THE ONE-CALL SYSTEM SHALL PROMPTLY TRANSMIT A COPY
21 OF THE TICKET TO THE DEPARTMENT OF TRANSPORTATION, AN
22 ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, OR THE
23 MARYLAND TRANSPORTATION AUTHORITY, AS APPLICABLE.

24 (3) A TICKET IS VALID FOR 12 BUSINESS DAYS AFTER THE DAY ON
25 WHICH THE TICKET IS TRANSMITTED BY THE ONE-CALL SYSTEM TO AN ~~OWNER~~
26 OWNER-MEMBER.

27 12-125.

28 (A) A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER §
29 12-124~~(A)~~ OF THIS SUBTITLE IF THE PERSON:

30 (1) HAS NOT COMPLETED OR WILL NOT COMPLETE THE
31 EXCAVATION OR DEMOLITION WITHIN THE TIME PERIOD AUTHORIZED BY THE
32 TICKET; OR

1 (2) INTENDS TO EXPAND THE EXCAVATION OR DEMOLITION
2 BEYOND THE LOCATION INDICATED IN THE NOTICE UNDER § 12-124(B) OF THIS
3 SUBTITLE.

4 (B) A PERSON SHALL REPEAT THE NOTIFICATION REGARDLESS OF:

5 (1) ANY DELAYS BY AN ~~OWNER~~ OWNER-MEMBER IN MARKING ITS
6 UNDERGROUND FACILITIES; OR

7 (2) AN AGREEMENT BETWEEN THE PERSON AND AN ~~OWNER~~
8 OWNER-MEMBER REGARDING THE TIME FOR MARKING UNDERGROUND
9 FACILITIES.

10 12-126.

11 (A) AN ~~OWNER~~ OWNER-MEMBER SHALL MARK ITS UNDERGROUND
12 FACILITY IF THE ~~OWNER~~ OWNER-MEMBER HAS DETERMINED THAT A PROPOSED
13 EXCAVATION OR DEMOLITION:

14 (1) IS WITHIN 5 FEET OF THE HORIZONTAL PLANE OF THE
15 UNDERGROUND FACILITY; OR

16 (2) BECAUSE OF PLANNED BLASTING, IS SO NEAR TO THE
17 UNDERGROUND FACILITY THAT THE UNDERGROUND FACILITY MAY BE
18 DAMAGED OR DISTURBED.

19 (B) (1) AN ~~OWNER~~ OWNER-MEMBER SHALL MARK THE LOCATION OF
20 ITS UNDERGROUND FACILITY BY MARKING ON THE GROUND WITHIN 18 INCHES
21 ON A HORIZONTAL PLANE ON EITHER SIDE OF THE UNDERGROUND FACILITY.

22 (2) (I) WHEN MARKING THE LOCATION OF AN UNDERGROUND
23 FACILITY, AN ~~OWNER~~ OWNER-MEMBER SHALL USE THE CURRENT COLOR CODES
24 ESTABLISHED BY THE AMERICAN PUBLIC WORKS ASSOCIATION FOR MARKING
25 UNDERGROUND FACILITIES.

26 (II) IF TWO OR MORE ~~OWNERS~~ OWNER-MEMBERS SHARE
27 THE SAME COLOR CODE, EACH ~~OWNER~~ OWNER-MEMBER SHALL INCLUDE
28 INFORMATION WITH THE MARKING THAT INDICATES THE ~~OWNER~~
29 OWNER-MEMBER OF THE MARKED UNDERGROUND FACILITY.

30 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, WITHIN
31 2 BUSINESS DAYS AFTER THE DAY ON WHICH A TICKET IS TRANSFERRED TO AN
32 ~~OWNER~~ OWNER-MEMBER, THE ~~OWNER~~ OWNER-MEMBER SHALL:

1 (1) MARK THE LOCATION OF THE ~~OWNER'S~~ OWNER-MEMBER'S
2 UNDERGROUND FACILITY AND REPORT TO THE UNDERGROUND FACILITIES
3 INFORMATION EXCHANGE SYSTEM THAT THE UNDERGROUND FACILITY HAS
4 BEEN MARKED; OR

5 (2) REPORT TO THE UNDERGROUND FACILITIES INFORMATION
6 EXCHANGE SYSTEM THAT THE ~~OWNER~~ OWNER-MEMBER HAS NO UNDERGROUND
7 FACILITIES IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION.

8 (D) (1) IF AN ~~OWNER~~ OWNER-MEMBER IS UNABLE TO MARK THE
9 LOCATION OF THE ~~OWNER'S~~ OWNER-MEMBER'S UNDERGROUND FACILITY
10 WITHIN THE TIME PERIOD PRESCRIBED IN SUBSECTION (C) OF THIS SECTION
11 BECAUSE OF THE SCOPE OF THE PROPOSED EXCAVATION OR DEMOLITION, THE
12 ~~OWNER~~ OWNER-MEMBER SHALL:

13 (I) PROMPTLY NOTIFY THE UNDERGROUND FACILITIES
14 INFORMATION EXCHANGE SYSTEM AND THE PERSON THAT INTENDS TO
15 PERFORM THE EXCAVATION OR DEMOLITION; AND

16 (II) WORK WITH THE PERSON THAT INTENDS TO PERFORM
17 THE EXCAVATION OR DEMOLITION TO DEVELOP A MUTUALLY AGREEABLE
18 SCHEDULE FOR MARKING THE UNDERGROUND FACILITY.

19 (2) IF THE ~~OWNER~~ OWNER-MEMBER AND PERSON THAT INTENDS
20 TO PERFORM THE EXCAVATION OR DEMOLITION CANNOT REACH A MUTUALLY
21 AGREEABLE SCHEDULE FOR MARKING UNDER PARAGRAPH (1) OF THIS
22 SUBSECTION, THE ~~OWNER~~ OWNER-MEMBER SHALL MARK THAT PORTION OF
23 THE SITE WHERE EXCAVATION OR DEMOLITION WILL FIRST OCCUR, AND THE
24 ~~OWNER~~ OWNER-MEMBER SHALL MARK THE REMAINDER OF THE SITE WITHIN A
25 REASONABLE TIME.

26 (3) IF, DUE TO CIRCUMSTANCES BEYOND AN ~~OWNER'S~~
27 OWNER-MEMBER'S CONTROL AND FOR REASONS OTHER THAN THOSE
28 SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, AN ~~OWNER~~
29 OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF THE ~~OWNER'S~~
30 OWNER-MEMBER'S UNDERGROUND FACILITY WITHIN THE TIME PERIOD
31 PRESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE ~~OWNER~~
32 OWNER-MEMBER SHALL REPORT TO THE UNDERGROUND FACILITIES
33 INFORMATION EXCHANGE SYSTEM THAT AN EXTENSION IS REQUIRED.

34 (4) IN CONNECTION WITH EXTENSIVE OR CONTIGUOUS
35 EXCAVATION OR DEMOLITION PROJECTS, THE PERSON PERFORMING THE
36 EXCAVATION OR DEMOLITION AND THE ~~OWNER~~ OWNER-MEMBER MAY

1 ESTABLISH A WORKING AGREEMENT REGARDING THE TIME PERIODS FOR
2 MARKING THE UNDERGROUND FACILITY.

3 12-127.

4 (A) A PERSON MAY BEGIN EXCAVATION OR DEMOLITION ONLY AFTER
5 THE PERSON RECEIVES NOTIFICATION FROM THE UNDERGROUND FACILITIES
6 INFORMATION EXCHANGE SYSTEM OF THE ONE-CALL SYSTEM CONFIRMING
7 THAT ALL APPLICABLE ~~OWNERS~~ OWNER-MEMBERS HAVE:

8 (1) MARKED THEIR UNDERGROUND FACILITIES IN ACCORDANCE
9 WITH § 12-126(C) OF THIS SUBTITLE;

10 (2) MARKED THE APPLICABLE PORTION OF THEIR
11 UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-126(D) OF THIS
12 SUBTITLE; OR

13 (3) REPORTED THAT THEY HAVE NO UNDERGROUND FACILITIES
14 IN THE VICINITY OF THE EXCAVATION OR DEMOLITION.

15 (B) (1) AFTER AN ~~OWNER~~ OWNER-MEMBER HAS MARKED THE
16 LOCATION OF AN UNDERGROUND FACILITY IN ACCORDANCE WITH § 12-126 OF
17 THIS SUBTITLE, THE PERSON PERFORMING THE EXCAVATION OR DEMOLITION
18 IS RESPONSIBLE FOR THE MAINTENANCE OF THE DESIGNATED MARKER.

19 (2) IF THE MARKER IS OBLITERATED, DESTROYED, OR REMOVED,
20 THE PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER § 12-124(A)
21 OF THIS SUBTITLE.

22 (C) (1) A PERSON PERFORMING AN EXCAVATION OR DEMOLITION
23 SHALL EXERCISE DUE CARE TO AVOID INTERFERENCE WITH OR DAMAGE TO AN
24 UNDERGROUND FACILITY THAT AN ~~OWNER~~ OWNER-MEMBER HAS MARKED IN
25 ACCORDANCE WITH § 12-126 OF THIS SUBTITLE.

26 ~~(2) IF EXCAVATION OR DEMOLITION IS PERFORMED WITHIN 18~~
27 ~~INCHES OF AN UNDERGROUND FACILITY MARKING, THE EXCAVATION OR~~
28 ~~DEMOLITION SHALL BE PERFORMED BY HAND OR OTHER NONDESTRUCTIVE~~
29 ~~TECHNIQUES.~~

30 (2) BEFORE USING MECHANIZED EQUIPMENT FOR EXCAVATION
31 OR DEMOLITION WITHIN 18 INCHES OF AN UNDERGROUND FACILITY MARKING,
32 A PERSON SHALL EXPOSE THE UNDERGROUND FACILITY TO ITS OUTERMOST
33 SURFACES BY HAND OR OTHER NONDESTRUCTIVE TECHNIQUES.

1 (3) A PERSON MAY NOT USE MECHANIZED EQUIPMENT TO
2 EXCAVATE WITHIN 18 INCHES OF THE OUTERMOST SURFACE OF AN EXPOSED
3 UNDERGROUND FACILITY.

4 ~~(4) IF A PERSON IS PERFORMING AN EXCAVATION OR~~
5 ~~DEMOLITION THAT RUNS PARALLEL TO AN UNDERGROUND FACILITY AND IS~~
6 ~~WITHIN 18 INCHES OF AN UNDERGROUND FACILITY MARKING, THE PERSON~~
7 ~~SHALL:~~

8 ~~(I) MAKE TEST HOLES AT THE MIDPOINT AND AT EACH END~~
9 ~~OF THE EXCAVATION OR DEMOLITION AREA; AND~~

10 ~~(II) IF APPLICABLE, MAKE TEST HOLES AT INTERVALS OF~~
11 ~~NOT MORE THAN 100 FEET.~~

12 (D) (1) THE PERSON PERFORMING AN EXCAVATION OR DEMOLITION
13 IMMEDIATELY SHALL NOTIFY THE ~~OWNER~~ OWNER-MEMBER OF THE FACILITY IF
14 THE PERSON DISCOVERS OR CAUSES ANY DAMAGE TO OR DISLOCATION OR
15 DISTURBANCE OF AN UNDERGROUND FACILITY IN CONNECTION WITH THE
16 EXCAVATION OR DEMOLITION.

17 (2) IF THE DAMAGE, DISLOCATION, OR DISTURBANCE RESULTS IN
18 THE ESCAPE OF A FLAMMABLE, TOXIC, OR CORROSIVE GAS OR LIQUID, THE
19 PERSON PERFORMING THE EXCAVATION OR DEMOLITION IMMEDIATELY SHALL
20 REPORT THE DAMAGE TO THE 9-1-1 EMERGENCY SYSTEM.

21 (E) (1) IF A PERSON KNOWS OR HAS REASON TO KNOW THAT AN
22 UNDERGROUND FACILITY IN THE AREA OF A PLANNED OR ONGOING
23 EXCAVATION OR DEMOLITION IS NOT MARKED AS REQUIRED BY THIS SUBTITLE,
24 THE PERSON MAY NOT BEGIN OR CONTINUE THE EXCAVATION OR DEMOLITION
25 UNLESS THE PERSON:

26 (I) HAS REPEATED THE NOTIFICATION REQUIRED UNDER §
27 ~~12-124(A)~~ OF THIS SUBTITLE; AND

28 (II) RECEIVES NOTIFICATION FROM THE UNDERGROUND
29 FACILITIES INFORMATION EXCHANGE SYSTEM OF THE ONE-CALL SYSTEM
30 CONFIRMING THAT ALL APPLICABLE ~~OWNERS~~ OWNER-MEMBERS THAT HAVE
31 UNDERGROUND FACILITIES IN THE VICINITY OF THE EXCAVATION OR
32 DEMOLITION HAVE MARKED:

33 1. THE UNDERGROUND FACILITIES IN ACCORDANCE
34 WITH § 12-126(C) OF THIS SUBTITLE; OR

1 **2. THE APPLICABLE PORTION OF THE**
 2 **UNDERGROUND FACILITIES IN ACCORDANCE WITH 12-126(D) OF THIS**
 3 **SUBTITLE.**

4 **(2) IF THE UNDERGROUND FACILITY IS NOT MARKED AS**
 5 **REQUIRED BY THIS SUBTITLE AFTER THE PERSON RECEIVES NOTIFICATION**
 6 **FROM THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM**
 7 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PERSON MAY PROCEED WITH**
 8 **THE EXCAVATION OR DEMOLITION.**

9 12-128.

10 ~~¶(a)~~ A political subdivision ~~for,~~ ~~—A~~ municipal corporation, THE
 11 DEPARTMENT OF TRANSPORTATION, AN ADMINISTRATION OF THE
 12 DEPARTMENT OF TRANSPORTATION, OR THE MARYLAND TRANSPORTATION
 13 AUTHORITY, OR AN OWNER may **NOT** charge, assess, or collect from a person ~~for~~
 14 one-time initial marking fee not exceeding \$35 ~~A FEE~~ for reimbursement of expenses
 15 that the political subdivision ~~for,~~ municipal corporation, THE DEPARTMENT OF
 16 TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF
 17 TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY, OR
 18 ~~OWNER~~ incurs to comply with this subtitle.

19 ~~¶(b)~~ If re-marking is requested, or is required after renotification under §
 20 12-108(b) of this subtitle, a political subdivision ~~or,~~ municipal corporation, OR ANY OF
 21 THE TRANSPORTATION ENTITIES SPECIFIED IN SUBSECTION (A) OF THIS
 22 SECTION may charge, assess, or collect from a person a re-marking fee not exceeding
 23 \$15 for reimbursement of expenses that the political subdivision ~~or,~~ municipal
 24 corporation, OR ANY OF THE TRANSPORTATION ENTITIES SPECIFIED IN
 25 SUBSECTION (A) OF THIS SECTION incurs to comply with this subtitle. ~~‡~~

26 **12-129. RESERVED.**

27 **12-130. RESERVED.**

28 PART V. DESIGNER REQUESTS.

29 12-131.

30 **(A) IN CONNECTION WITH A PROJECT THAT MAY REQUIRE EXCAVATION**
 31 **OR DEMOLITION, A DESIGNER MAY INITIATE A TICKET REQUEST BY NOTIFYING**
 32 **THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA COVERING THE**
 33 **PLANNED PROJECT.**

34 **(B) A DESIGNER INITIATING A TICKET REQUEST UNDER THIS SECTION:**

1 (1) MAY INITIATE ONLY ONE TICKET REQUEST FOR A SINGLE
2 PROJECT; AND

3 (2) SHALL, IN CONNECTION WITH A TICKET REQUEST:

4 (I) INDICATE THAT THE REQUEST IS FOR DESIGN
5 PURPOSES ONLY AND MAY NOT BE USED FOR THE PURPOSE OF EXCAVATION OR
6 DEMOLITION;

7 (II) NOTIFY THE ONE-CALL SYSTEM OF ANY ~~OWNERS~~
8 OWNER-MEMBERS FROM WHICH THE DESIGNER DOES NOT REQUIRE
9 UNDERGROUND FACILITIES INFORMATION; AND

10 (III) ON THE REQUEST OF AN ~~OWNER~~ OWNER-MEMBER,
11 PROVIDE THE ~~OWNER~~ OWNER-MEMBER WITH A PRELIMINARY DRAWING THAT
12 INDICATES THE SCOPE OF THE PROJECT.

13 (C) (1) WITHIN 15 BUSINESS DAYS AFTER RECEIVING NOTICE FROM A
14 ONE-CALL SYSTEM THAT A DESIGNER HAS MADE A REQUEST UNDER THIS
15 SECTION, AN ~~OWNER~~ OWNER-MEMBER OF AN UNDERGROUND FACILITY IN THE
16 AREA OF THE PROJECT SHALL NOTIFY THE DESIGNER OF THE TYPE AND
17 APPROXIMATE LOCATION OF THE UNDERGROUND FACILITY.

18 (2) AN ~~OWNER~~ OWNER-MEMBER MAY PROVIDE NOTICE OF THE
19 APPROXIMATE LOCATION OF AN UNDERGROUND FACILITY THROUGH THE USE
20 OF:

21 (I) FIELD LOCATES;

22 (II) MAPS;

23 (III) SURVEYS;

24 (IV) INSTALLATION RECORDS; OR

25 (V) OTHER SIMILAR MEANS.

26 (D) (1) INFORMATION PROVIDED TO A DESIGNER UNDER THIS
27 SECTION IS FOR INFORMATIONAL PURPOSES ONLY.

28 (2) AN ~~OWNER~~ OWNER-MEMBER OR AGENT OF AN ~~OWNER~~
29 OWNER-MEMBER MAY NOT BE HELD LIABLE FOR ANY INACCURATE
30 INFORMATION PROVIDED TO A DESIGNER UNDER THIS SECTION.

31 12-132. RESERVED.

1 **12-133. RESERVED.**

2 **PART VI. ENFORCEMENT AND PENALTIES.**

3 12-134.

4 (a) To stop or prevent a negligent or unsafe excavation or demolition, an
5 owner or the Attorney General may file an action for a writ of mandamus or injunction
6 in a court of competent jurisdiction in Baltimore City or the county in which the
7 excavation or demolition is being performed or is to be performed or in which the
8 person resides or has its principal place of business, if the person:

9 (1) is performing an excavation or demolition in a negligent or unsafe
10 manner that has resulted in or is likely to result in damage to an underground facility;
11 or

12 (2) is intending to use procedures to carry out the excavation or
13 demolition that are likely to result in damage to an underground facility.

14 (b) (1) To make its judgment or processes effective, the court may join as
15 parties any persons necessary or proper.

16 (2) If appropriate, the court shall issue a final order granting the
17 injunction or writ of mandamus.

18 12-135.

19 (a) **(1)** A person that performs an excavation or demolition without first
20 providing the notice required under § [12-108] **12-124(A)** of this subtitle and
21 damages, dislocates, or disturbs an underground facility is deemed negligent and is
22 subject to a civil penalty **ASSESSED BY THE AUTHORITY** not exceeding:

23 **(I)** [\$1,000] ~~\$2,500~~ **\$2,000** for the first offense; and

24 **(II)** [\$1,000] **SUBJECT TO SUBSECTION (C) OF THIS SECTION,**
25 ~~\$5,000~~ **\$4,000** for each subsequent offense [or ten times the cost of repairs to the
26 underground facility caused by the damage, dislocation, or disturbance].

27 **(2) INSTEAD OF OR IN ADDITION TO A CIVIL PENALTY ASSESSED**
28 **UNDER THIS SUBSECTION, THE AUTHORITY MAY:**

29 **(I) REQUIRE THAT A PERSON:**

30 **1. PARTICIPATE IN DAMAGE PREVENTION TRAINING;**

31 **OR**

1 **2. IMPLEMENT PROCEDURES TO MITIGATE THE**
2 **LIKELIHOOD OF DAMAGE TO UNDERGROUND FACILITIES; OR**

3 **(II) IMPOSE OTHER SIMILAR MEASURES.**

4 **(3) A PERSON THAT VIOLATES ANY ~~OTHER~~ PROVISION OF PART**
5 **~~IV OR PART V~~ OF THIS SUBTITLE IS SUBJECT TO A CIVIL PENALTY ASSESSED BY**
6 **THE AUTHORITY NOT EXCEEDING ~~\$2,500~~ \$2,000.**

7 **(b) (1) THIS SUBSECTION APPLIES IF A PROCEEDING HAS NOT BEEN**
8 **INITIATED BEFORE THE AUTHORITY.**

9 **(2) A COURT OF COMPETENT JURISDICTION MAY ASSESS A CIVIL**
10 **PENALTY OF UP TO 10 TIMES THE COST OF REPAIRS TO THE UNDERGROUND**
11 **FACILITY CAUSED BY THE DAMAGE, DISLOCATION, OR DISTURBANCE AGAINST A**
12 **PERSON THAT HAS COMMITTED A SUBSEQUENT OFFENSE UNDER SUBSECTION**
13 **(A)(1) OF THIS SECTION.**

14 **(3) An action to recover a civil penalty under this [section]**
15 **SUBSECTION shall be brought by an owner of a damaged, dislocated, or disturbed**
16 **underground facility or the Attorney General in a court of competent jurisdiction in**
17 **Baltimore City or the county in which the damage, dislocation, or disturbance**
18 **occurred.**

19 **(4) THE PARTY BRINGING AN ACTION UNDER THIS SUBSECTION**
20 **MAY RECOVER REASONABLE ATTORNEY'S FEES.**

21 **(C) THE AUTHORITY MAY NOT ASSESS A CIVIL PENALTY UNDER**
22 **SUBSECTION (A)(1)(II) OF THIS SECTION IF AN ACTION TO RECOVER A CIVIL**
23 **PENALTY HAS BEEN BROUGHT UNDER SUBSECTION (B) OF THIS SECTION.**

24 **[(c)] (D) All civil penalties recovered [in an action] under this section[,**
25 **including reasonable attorney's fees,] shall be paid into the [General Fund of the**
26 **State] FUND.**

27 **Article – State Government**

28 12–101.

29 **(a) In this subtitle, unless the context clearly requires otherwise, “State**
30 **personnel” means:**

31 **(2) an employee or official of the:**

32 **(i) Maryland Transportation Authority;**

- 1 (ii) Injured Workers' Insurance Fund;
- 2 (iii) Maryland Stadium Authority;
- 3 (iv) Maryland Environmental Service;
- 4 (v) overseas programs of the University College of the
5 University System of Maryland;
- 6 (vi) Maryland Economic Development Corporation;
- 7 (vii) Maryland Technology Development Corporation;
- 8 (viii) Maryland African American Museum Corporation;
- 9 (ix) Maryland Automobile Insurance Fund;
- 10 (x) Maryland Health and Higher Educational Facilities
11 Authority;
- 12 (xi) Maryland Agricultural and Resource-Based Industry
13 Development Corporation;
- 14 (xii) Somers Cove Marina Commission; [and]
- 15 (xiii) Maryland Workforce Corporation; AND

16 (XIV) MARYLAND UNDERGROUND FACILITIES DAMAGE
17 PREVENTION AUTHORITY;

18 ~~SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland~~
19 ~~read as follows:~~

20 ~~Article — Public Utility Companies~~

21 ~~12-101.~~

22 (a) ~~In this subtitle the following words have the meanings indicated.~~

23 (e) (1) ~~“Underground facility” means personal property that is to be~~
24 ~~buried or submerged for:~~

25 (i) ~~use in connection with the storage or conveyance of water,~~
26 ~~sewage, oil, gas, or other substances; or~~

1 (ii) ~~transmission or conveyance of electronic, telephonic, or~~
2 ~~telegraphic communications or electricity.~~

3 (2) ~~“Underground facility” includes STORMWATER DRAINS, pipes,~~
4 ~~sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those~~
5 ~~portions of poles below ground.~~

6 ~~[(3) “Underground facility” does not include a stormwater drain.]~~

7 SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That the terms of the initial
8 members of the Maryland Underground Facilities Damage Prevention Authority shall
9 expire as follows:

10 (1) in 2011:

11 (i) the member appointed from a list submitted by the Public
12 Works Contractors Association of Maryland;

13 (ii) one of the underground facility owners appointed from a list
14 submitted by the Maryland members of the Maryland/DC Subscribers Committee as
15 identified by the Governor on the initial appointment of that member to the Authority;

16 (iii) the member who represents Maryland’s underground utility
17 locator community appointed from a list submitted by the Maryland members of the
18 Maryland/DC Damage Prevention Committee;

19 (iv) the member appointed from a list submitted by the
20 Maryland Association of Counties; and

21 (v) the member of the general public; and

22 (2) in 2012:

23 (i) the member appointed from a list submitted by the
24 Associated Utility Contractors of Maryland;

25 (ii) one of the underground facility owners appointed from a list
26 submitted by the Maryland members of the Maryland/DC Subscribers Committee as
27 identified by the Governor on the initial appointment of that member to the Authority;

28 (iii) the member appointed from a list submitted by the one-call
29 centers operating in the State; and

30 (iv) the member appointed from a list submitted by the
31 Maryland Municipal League.

1 ~~SECTION 6. AND BE IT FURTHER ENACTED, That a person that owns~~
 2 ~~stormwater drains in the State shall make a good faith effort to identify the location of~~
 3 ~~the stormwater drains before January 1, 2012. A person that owns stormwater drains~~
 4 ~~constructed before January 1, 2012, shall be held harmless under this Act with respect~~
 5 ~~to any such stormwater drains that the owner could not identify and locate after~~
 6 ~~making a good faith effort.~~

7 ~~SECTION 7. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall~~
 8 ~~take effect January 1, 2012.~~

9 SECTION ~~8.~~ 5. AND BE IT FURTHER ENACTED, That, ~~except as provided in~~
 10 ~~Section 7 of this Act,~~ this Act shall take effect October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.